

NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17-CVS-002812

ALBERT EARLE FINLEY, III, individually )  
and derivatively on behalf of the A. E. )  
FINLEY FOUNDATION, INC., )

Plaintiffs, )

v. )

ROBERT C. BROWN, ALTON E. )  
HOWARD, CHARLES D. NOTTINGHAM, )  
III, WALTER NOTTINGHAM and )  
JOSH STEIN, Attorney General of the State )  
of North Carolina, )

Defendants, )

A.E. FINLEY FOUNDATION, INC., )

Nominal Defendant. )

**CONSENT ORDER**

With the consent of all parties and for the implementation of a compromise settlement of the claims at issue in this action, it is hereby ordered, adjudged and decreed as follows:

1. Defendants, Robert C. Brown, Alton E. Howard, Charles D. Nottingham, III, and Walter Nottingham, ["Director Defendants"] shall be deemed to have resigned as directors of the A. E. Finley Foundation, Inc. ["the Foundation"] effective upon the entry of this order. Robert C. Brown shall be deemed to have resigned as President and Treasurer of the Foundation as of the date of entry of this order.

2. Except as specifically stated herein, Plaintiff, Albert Earl Finley, III and all others who hereafter serve as directors of the Foundation shall operate the Foundation in accordance with the strict terms of the Last Will and Testament of A. E. Finley, a copy of which is attached to this order as Exhibit A [the "Will"]. The Foundation must adhere to all of the provisions of the Will

pertaining to the Foundation, not merely Article X, unless deviations from the terms of the Will are permitted by an order of an appropriate court allowing a modification of the terms of the Will pursuant to applicable law governing modifications of trust, including the *Cy Pres* Doctrine and Chapter 36C of the North Carolina General Statutes.

3. In 2014, the successor to Accomac-Northhampton Memorial Hospital and Broadwater Academy, two of the entities due to receive annual distributions of 10% and 5% respectively of the net income of the Foundation pursuant to the Will, released their claims from such distributions from the Foundation in exchange for a substantial lump sum payment. Accordingly, the Foundation shall in the future increase by 15% (a) the percentages of the Foundation's net income which each of the entities named in Article X(ii) are due to receive and (b) the portion of that income that is available for charitable grants by the Foundation in its discretion.

4. As additional consideration for the Director Defendants' resignation as Directors, they are hereby discharged from all further duties to the Foundation and released from all claims by or on behalf of the Foundation including, but not limited to, the claims asserted or that could have been asserted in this action.

5. Robert C. Brown shall receive, as severance pay, his salary and benefits as President of the Foundation (except bonuses) through December 31, 2017. In consideration for the severance pay, Mr. Brown shall make himself reasonably available during the period through the end of such severance pay to answer questions by the new Directors about matters relating to the Foundation that they reasonably need to know for carrying out their duties to the Foundation.

6. Once the Director Defendants have resigned and have been replaced with four new Directors, the new Directors shall within a reasonable time thereafter, receive training on their

legal and ethical obligations to the Foundation, including the following topics: managing conflicts of interest, best practices of nonprofit governance, and prudent and responsible financial management.

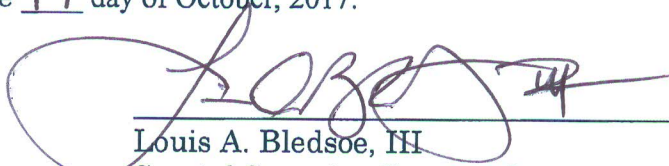
7. The Foundation shall pay the reasonable attorney's fees of the Foundation, Plaintiff and Defendants pursuant to Article III, Section II of the Foundation's By Laws. In the event of any objection by any party to the reasonableness of the amount of any such fees, the Court shall determine reasonableness.

8. The Parties' consent to this Order reflects a full and complete settlement of disputed claims and of liabilities claimed and denied, and no Party's consent to this Order or performance hereunder, shall be construed as an admission of liability or fault by any Party, which liability or fault is denied. This Order is solely to avoid the burden and expense of further litigation.

9. Each Party hereto shall bear his or its own costs related to this Order and Lawsuit except as otherwise provided in this Order.

10. This action and all claims herein are dismissed with prejudice, except that the Court retains jurisdiction to enforce the provisions of this Order. This paragraph shall not authorize this Court to authorize any modification of the Will pursuant to Paragraph 2 above except to the extent, if any, that the Court would have had jurisdiction in the absence of this Order.

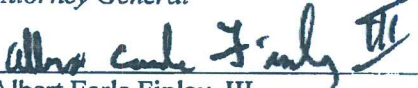
SO ORDERED, this the 19<sup>th</sup> day of October, 2017.

  
\_\_\_\_\_  
Louis A. Bledsoe, III  
Special Superior Court Judge  
for Complex Business Cases

WE CONSENT:

\_\_\_\_\_  
Michael T. Medford  
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*Attorney for Josh H. Stein, North Carolina  
Attorney General*

  
\_\_\_\_\_  
Albert Earle Finley, III

\_\_\_\_\_  
Alton E. Howard

\_\_\_\_\_  
Walter Nottingham

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Thomas C. Kilpatrick  
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*Attorneys for Nominal Defendant  
A.E. Finley Foundation, Inc.*

  
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*Attorneys for Plaintiffs*

\_\_\_\_\_  
Robert C. Brown

\_\_\_\_\_  
Charles D. Nottingham, III

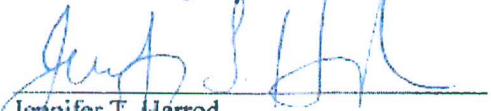
This the \_\_\_\_ day of October, 2017.

923473-3-mtm/L48138

WE CONSENT:

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Robert C. Brown

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Charles D. Nottingham, III

This the \_\_\_\_ day of October, 2017.

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Alton E. Howard

  
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Walter Nottingham

  
\_\_\_\_\_  
Robert C. Brown


  
\_\_\_\_\_  
Charles D. Nottingham, III

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*Attorneys for Plaintiffs*

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Albert Earl Finley, III

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Robert C. Brown

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Alton E. Howard

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Charles D. Nottingham, III

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Walter Nottingham

This the \_\_\_\_ day of October, 2017.

923473-3-nlm/L48138

# EXHIBIT A

787-2352  
Rec'd to Revell 8-12-86

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILED  
1986 OCT 14 PM 3:03

86-E-1369  
86 148 218  
YCL FILM ITEM

WAKE COUNTY, N.C.  
ALBERT EARLE FINLEY

FIRST CODICIL TO MY LAST WILL AND TESTAMENT

I, ALBERT EARLE FINLEY, declare this to be the first codicil to my Last Will and Testament dated the 16th day of July, 1986.

At my demise I direct my Executors to add to the list of beneficiaries paid by the "MAR-FIN ACCOUNT" in Article VIII, Paragraph (1), Page 5, my wife, Mrs. A. E. Finley the amount of five hundred dollars (\$500.00) per month for life as stipulated in said "MAR-FIN ACCOUNT", she to be entitled to same benefits and the same conditions required at her death, whereas her \$500.00 portion would then be paid to A. E. Finley Foundation, Inc.

IN WITNESS WHEREOF, I ALBERT EARLE FINLEY, do hereby sign my name to this instrument, and being first duly sworn, DO HEREBY DECLARE to the undersigned authority that I sign and execute this instrument, consisting of one (1) typewritten page, as the First Codicil to my Last Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence, this 9th day of September, 1986.

Albert Earle Finley (SEAL)  
ALBERT EARLE FINLEY

We, the undersigned, so hereby sign our names as witnesses to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his First Codicil to his Last Will and that he signs it willingly, and that each of us, in the presence and hearing of the Testator, hereby signs this Codicil as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Merlin A. Means  
Witness

Raleigh, N.C.  
Address

M. C. Brown  
Witness

Raleigh, N.C.  
Address

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE me by Albert Earle Finley, the Testator, and SUBSCRIBED and SWORN TO before me by Merlin A. Means, and M. C. Brown, Witnesses this 9th day of September, 1986.

Frank M. Hay  
Notary Public



86-LE-1369

FILED

STATE OF NORTH CAROLINA  
COUNTY OF WAKEOCT 14 PM 3:03  
WAKE COUNTY, N.C.

BY \_\_\_\_\_

I, ALBERT EARLE FINLEY, domiciled in Raleigh, Wake County, North Carolina, declare this to be my last will, hereby revoking all former wills and codicils.

## ARTICLE I

I direct that my just debts (including unpaid charitable pledges, whether or not the same are enforceable obligations of estate) and the costs of administration of my estate be paid out of the assets of my estate as soon as practicable after my death.

## ARTICLE II

(a) During my lifetime I have established the A. E. Finley Foundation, Inc. ("Foundation") as a charitable organization and have made substantial gifts of property to it. I am also making it a prime and ultimate beneficiary under this will. My beloved wife, MARIAN N. FINLEY, and I are in complete agreement about all matters that pertain to the Foundation and the purposes for which it was founded, and have a common plan for its funding and perpetuation. It is our feeling that adequate provisions have been made for persons who we love and admire both by gifts during our lifetime and by bequests in our respective wills and my Executors and beneficiaries are instructed that after my demise there are to be no controversies about or objections to any of the gifts which have been made to the A. E. Finley Foundation, Inc.

(b) After my death I direct that ROBERT C. BROWN, ALTON E. HOWARD, D. J. JONES, W. C. CALTON, GEORGE W. WILSON, CHARLES D. NOTTINGHAM, II, A. EARLE FINLEY, II, and N. A. TOWNSEND, JR. shall comprise the Board of Directors of the Foundation; that each director shall serve until he attains 80

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years of age at which time retirement is mandatory; that vacancies on the Board shall not be filled until its membership is reduced to less than five (5) after which the number of directors shall be maintained at five (5) and as they occur from time to time vacancies shall be filled by majority vote of the directors then serving; that the directors shall meet quarterly and receive a fee of \$750 each for each meeting attended (no attendance, no fee); and that ALTON E. HOWARD (C.P.A.) and N. A. TOWNSEND, JR. (attorney) be retained to provide accounting and legal services until each reaches 80 years of age provided their charges are reasonable and their services are satisfactory to the Board of Directors.

(c) After my death I direct that ROBERT C. BROWN continue to serve on a full time basis as Secretary-Treasurer of the Foundation; that ANDY GOODWIN be employed to assist Brown in maintaining the records and office of the Foundation; that, as long as their services suit the Board of Directors, the Foundation continue to pay each of Brown and Goodwin, respectively, the salary that he is receiving at the time of my death until he dies or attains 65 years of age and commences to draw a social security retirement benefit; and that after Brown reaches 65 years of age the salary paid to him be \$2,500 per month.

(d) During my lifetime my residence at 1723 Canterbury Road was conveyed to the Foundation subject to reserved life estates for me and my wife. After the death of both me and my wife, therefore, title to this property will be fully vested in the Foundation, and I direct that the property not be sold and that the residence, together with all of its furnishings and other contents, be maintained intact by the Foundation indefinitely as a memorial to me and my wife and be known as "Mar-Fin House".

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## ARTICLE III

I appoint ROBERT C. BROWN, ALTON E. HOWARD, D. J. JONES, W. C. CALTON, GEORGE W. WILSON, CHARLES D. NOTTINGHAM, II, A. EARLE FINLEY, II, and N. A. TOWNSEND, JR. to be Executors of this Will without bond. Should any of said individuals predecease me or for any other reason fail to qualify (or having qualified, shall die or resign) the other of said individuals shall be authorized to serve alone as Executors of this Will. I further direct that the fee of \$750 per meeting which each of said individuals receives as a director of the Foundation as provided in Article II, subparagraph (b) hereof, shall also constitute compensation for serving as Executor of this Will.

## ARTICLE IV

(a) I give and devise all of my hunting, fishing and golf equipment located at my Orlando, Florida residence to BEN G. NOTTINGHAM, SR. of Raleigh, North Carolina.

(b) I give and devise all of my hunting, fishing and golf equipment located at Raleigh, North Carolina to The A. E. Finley Foundation, Inc., to be kept at 1723 Canterbury Road, Raleigh, N.C.

(c) I give and devise to my nephew, ALBERT EARLE FINLEY, II, my diamond ring, my diamond wrist watch, and the personal automobile that I own at the time of my death.

(d) I give and devise to my wife, MARIAN N. FINLEY, if she survives me, all furniture and other personal property located in our Orlando, Florida residence (excluding my hunting, fishing and golf equipment) that she wishes to have. Any of such property that my said wife elects not to take or all of said property if she predeceases me, I give and devise to Mr. and Mrs. H. W. HELEM, 1206 - 41st Street, Orlando, Florida, who have purchased the Orlando residence.

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(e) All of my interest in the furniture, silverware, and other personal property located in my residence at 1723 Canterbury Road, Raleigh, N.C. (excluding my hunting, fishing and golf equipment and my clothing) I give and devise to my wife, MARIAN N. FINLEY, if she survives me, for her lifetime, and after the death of my said wife, or upon my death if she predeceases me, I give and devise said property to The A. E. Finley Foundation, Inc., to be kept in the residence at 1723 Canterbury Road.

## ARTICLE V

To each of IOLA EVANS, LUCILE ROBINSON and JO ANN LEWIS who survive me and are employed by my wife or me at the time of my death or who have been retired by us, I give and devise the sum of \$1,000.

## ARTICLE VI

All of the stock in Firstcorp, Inc. (formerly First Federal Savings & Loan Association of Raleigh) that I own at the time of death I give and devise to The A. E. Finley Foundation, Inc.

## ARTICLE VII

I give and devise to my friend, JOHN ALEXANDER, SR., all interest that I own in a note of Raleigh Tractor & Truck Company in the original principal amount of \$100,000 and the unpaid balance of which is \$100.

## ARTICLE VIII

During my lifetime I have been holding 22,000 shares of common stock of Carolina Power & Light Company, 15,000 shares of Dominion Resources, Inc. common stock, and a checking account at First Federal Savings & Loan Association, Raleigh, North Carolina, under the name of A. E. Finley trading as "Mar-Fin Account". I direct that the Mar-Fin Account be continued in the same form after my death and that it be administered as follows:

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(i) There shall be paid out of net income (or principal if income is insufficient) to each of the hereinafter named beneficiaries who survives me each month for his or her life the amount set opposite his or her name as follows:

<u>Name</u>	<u>Amount per month for life</u>
Mrs. W. R. Finley	\$ 800
Mrs. Grason F. Meares	400
Mrs. Virginia Mason Neave	400
Mrs. Margaret Wilkins	600
Mrs. Ilva Orton	600
W. Finley Mason	100
Mrs. Jeanne B. Mason	100
Mrs. Margaret O. James	500
Ms. Lucia Makepeace	600
Ms. Ann Deeter	300
Guy Wilkins	300
W. R. Finley, Jr.	100
A. Earle Finley, II	500
Mrs. Virginia Webster	300
Mrs. Connie Nottingham	100
Mrs. Betty Lengerhuis	100
Ms. Mamie Nottingham	300
Mr. Ben G. Nottingham, Sr.	200

All of the net income which is not used for the purpose of making the aforesaid payments shall be paid at least as often as annually to The A. E. Finley Foundation, Inc.

After the death of each of the named individual beneficiaries the amount payable out of net income to The A. E. Finley Foundation, Inc. shall include the amount formerly payable to such deceased beneficiary.

(ii) Upon the death of the last survivor of the named individual beneficiaries all properties in the Mar-Fin Account shall be delivered to The A. E. Finley Foundation, Inc.

#### ARTICLE IX

Subject to and upon the conditions stated hereinafter in Article X, I give and devise to The A. E. Finley Foundation, Inc., the following:

(i) Land and buildings at Asheville, North Carolina that I own and which are leased to North Carolina Equipment Company;



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(ii) My undivided interest in land and buildings at Knoxville, Tennessee, which are leased to A. E. Finley & Associates of Tennessee, Inc. (D. J. JONES and I each own an undivided 1/2 interest in this property);

(iii) Land, buildings and improvements on New Hope Church Road, Raleigh, North Carolina, which I own and which are leased to Fast Fare, Inc.;

(iv) All of my interest in a lease on property at Greensboro, North Carolina, and in a building and other improvements situated on such property, which property is subleased to Fast Fare, Inc.;

(v) The garage office building located back of my residence at 1723 Canterbury Road and all land that I own between that residence and the property upon which Boone's Pond was formerly located, such land being Tract "A" on Map of Property of A. E. Finley prepared by Moses Farmer dated October 9, 1970, and recorded in Book 1970 at page 246 of the Wake County, North Carolina, registry;

(vi) All bonds of Wake County Hospital System and Rex Hospital that I own; and

(vii) All of the rest, residue and remainder of my property and estate, real or personal, wheresoever situated (including any lapsed devises) which is not otherwise disposed of by this will or is not needed by my Executors for the payment of taxes, debts or expenses of administration of my estate.

#### ARTICLE X

It is my wish, and the devises set forth in Article IX of this will are made subject to and upon conditions subsequent that:

86E-1369

(i) The A. E. Finley Foundation, Inc., shall pay the taxes, insurance, and other expenses of maintaining the property at 1723 Canterbury Road, Raleigh, North Carolina;

(ii) To the following institutions, respectively, The A. E. Finley Foundation, Inc., at least as often as annually, shall separately pay a percentage of its annual net income as follows:

(a) Ten percent (10%) to Accomac-Northampton Memorial Hospital, Nassawadox, Virginia, to be used for the benefit of that institution in such manner as its governing board shall determine to be advisable;

(b) Five percent (5%) to White Memorial Presbyterian Church, Raleigh, North Carolina, to be used for the benefit of that institution in such manner as its governing board shall determine to be advisable;

(c) Eight percent (8%) to the Y.M.C.A. of Raleigh, Inc., to be used only for the maintenance of its buildings and facilities in Raleigh, North Carolina, and its facilities at Arapahoe, North Carolina, known as Camp Sea Gull and Camp Sea Farer;

(d) Four percent (4%) to Peace College, Raleigh, North Carolina, to be used for maintenance of the Marian N. Finley Dormitory and with any portion thereof not needed for such maintenance to be divided equally between the A. E. Finley Scholarship Fund and the D. J. Jones Endowment Fund;

(e) Eight percent (8%) to The University of North Carolina at Chapel Hill to be used for the maintenance of the Finley golf course and clubhouse;

(f) Eight percent (8%) to North Carolina State University for maintenance of the A. E. Finley Fieldhouse and Carter-Finley Stadium;

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(g) Five percent (5%) to Duke University to be used for the maintenance and operation of the lighting system at its football stadium;

(h) Five percent (5%) to Broadwater Academy, Exmore, Virginia, to be used for the benefit of that institution in such manner as its governing board shall determine to be advisable;

(i) Five percent (5%) to Hargrave Military Academy, Chatham, Virginia, to be used for the benefit of that institution in such manner as its governing board shall determine to be advisable;

(j) Twenty percent (20%) to Ravenscroft School to be used for the maintenance and operation of the A. E. Finley Athletic Activity Center; and

(k) Four percent (4%) to Rex Hospital, Raleigh, North Carolina, to be used for the operation and support of its physical therapy department.

For purposes of this subparagraph, the "net income" of The A. E. Finley Foundation, Inc. shall include its income from all sources (including income produced by properties contributed to it by me prior to my death) reduced by all expenses of its operations, and its "net income" shall be determined by the certified public accounting firm retained by the Foundation to prepare and file its tax returns using generally accepted accounting principles applied on a consistent basis. In the absence of fraud or bad faith, the determination of net income made by such accounting firm shall be conclusive and binding on all affected parties.

#### ARTICLE XI

I recognize that the provisions of Article X refer to less than 100% of the net income of The A. E. Finley Foundation, Inc., and it is my wish and intent that the remainder of its

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income be applied for charitable and educational purposes in such amount and at such times as its Board of Directors shall determine to be advisable. It is also my intent that a breach of the conditions subsequent stated in Article X of this will shall not be cause for a divestiture of the various assets which are devised to The A. E. Finley Foundation, Inc. subject to such conditions; that such conditions subsequent shall not be a charge upon such assets or impress such assets with any trust; and that such conditions subsequent be construed as covenants of the Foundation for the breach of which a remedy at law is available;

## ARTICLE XII

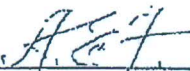
All transfer, estate, inheritance, succession, and other death taxes, together with any interest or penalty thereon, which shall become payable by reason of my death, in respect of property owned by me and passing under this will or with respect to any other property included in my gross estate for the purpose of determining such taxes, shall be paid from my residuary estate. If my residuary estate includes the proceeds of any insurance policies on my life or any shares of stock, I direct my Executors to first use the life insurance proceeds for the payment of death taxes and to next use the proceeds of the sale of stock to pay any remainder of such taxes.

## ARTICLE XIII

My Executors named in Article III of this Will (including any successor Executor) shall not be required to qualify, to file any inventory, appraisal, account or report with any court, or to give any bond (unless in each case they are otherwise required to do so notwithstanding this provision).

## ARTICLE XIV

I grant to my Executors with respect to my estate (including any successor Executor) the authority and power to



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exercise, in their sole discretion and without court order, in respect of any property forming part of my estate, or otherwise in their possession hereunder, all powers conferred by law upon executors, or expressed in this Will, and I intend that the powers so granted be construed in the broadest possible manner. Subject to North Carolina General Statutes Section 32-26, I further confer upon my Executors all the powers set forth in North Carolina General Statutes Section 32-27 which are hereby incorporated by reference as they exist at the time of my execution of this Will.

## ARTICLE XV

The reason for not making any provisions or more generous provisions for many relatives of my wife and me in my Will is because I have been supplementing the income of most of them for about forty years and trust funds have been established to assure the continuance of same for their lifetime. I therefore feel it more incumbent to recognize worthy institutions that have contributed materially to my success in many ways, for which my gratitude flows very deeply, and it gives me great pleasure to do so as one of my last acts.

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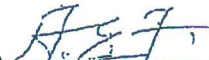
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IN WITNESS WHEREOF, I, ALBERT EARLE FINLEY, do hereby



86-E-1269

sign my name to this instrument, and being first duly sworn, DO HEREBY DECLARE to the undersigned authority that I sign and execute this instrument, consisting of this typewritten page and Ten (10) preceding typewritten pages, each of which either bears my initials or my signature at the place indicated, as my Last Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence, this 16<sup>th</sup> day of July, 1986.

Albert Earle Finley (SEAL)  
ALBERT EARLE FINLEY

We, the undersigned, do hereby sign our names as witnesses to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his Last Will and Testament and that he signs it willingly, and that each of us, in the presence and hearing of the Testator, hereby signs this Will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Merton A. Meares  
Witness

Raleigh N.C.  
Address

William M. Hill, Jr.  
Witness

Raleigh N.C.  
Address

STATE OF NORTH CAROLINA

COUNTY OF WAKE

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE me by Albert Earle Finley, the Testator, and SUBSCRIBED and SWORN TO before me by Merton A. Meares and William M. Hill, Jr., Witnesses, this 16<sup>th</sup> day of July, 1986.

James S. Greene  
Notary Public

My Commission Expires: July 10, 1990Page 11 of the Will of Albert Earle Finley